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In the Supreme Court of the United States.

OCTOBER TERM, 1920.

THE UNITED STATES, APPELLANT,	} No. 442.
v.	
STANLEY FIELD, AS EXECUTOR OF THE estate of Kate Field, deceased.	

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

STATEMENT.

This is an appeal from judgment of the Court of Claims. The question presented is whether or not the United States internal revenue act of 1916 (39 Stat., chap. 463, p. 756) renders taxable an estate passing under testamentary execution of a general power of appointment created prior but exercised subsequent to the passage of the act.

On November 8, 1911, Joseph N. Field, a citizen of Illinois, duly executed his last will and testament. After providing for certain specific legacies, he devised the residue of his estate to trustees, who were required to divide it into six separate trust funds. He named his wife as beneficiary of one such fund, comprising one-third of the trust estate. The testator

further gave to his wife, Kate Field, general power of appointment by will over one-half of the net income from the trust fund created for her benefit. The provisions of will creating such trust funds, together with the power of appointment, were as follows (record, p. 9):

(b) The said trust shall be divided by said trustees as soon as may be after the same shall come into their possession, into separate trust funds, as follows:

(1) If my wife, Kate Field, shall survive me one-third ($\frac{1}{3}$) of said trust estate shall be set apart and held as a separate trust fund for the benefit of my said wife, and the net income derived therefrom shall be paid to my wife during her life, and from and after her death the net income from one-half ($\frac{1}{2}$) of said share of said trust estate shall be paid to such persons, and in such shares, as she shall appoint by her last will and testament.

(2) Three-twelfths ($\frac{3}{12}$) of said trust estate, subject to the provision above made for my wife, shall be set apart and held as a separate trust fund for each of my two sons, Stanley and Norman, and two-twelfths ($\frac{2}{12}$) thereof as a fund for each of my three daughters, Maud, Laura, and Florence Josephine.

The will (record, pp. 9-14) in substance provided for the continuance of the trust until the death of the last surviving grandchild of the testator who was living at the time of his decease. Subject to the devise to Kate Field the income from the trust estate was required to be paid in the proportions

set forth in paragraph *b* (2) of the will to the beneficiaries named therein or to their issue *per stirpes*. On the termination of the trust the estate, then undistributed, was required to be divided among the beneficiaries named in paragraph *b* (2) of the will or to their issue *per stirpes* in the proportion there specified.

Joseph Field died April 29, 1914, and his will was duly probated in the Probate Court of Cook County, Illinois.

On January 7, 1916, Kate Field, a citizen of Illinois, the wife of Joseph Field, duly made her last will and testament, wherein she executed the power of appointment given her by the will of Joseph Field, as follows:

Seventh. Under the will of my late husband, Joseph N. Field, I am given the power to dispose of the net income from one-half of a trust fund from and after the date of my death, I receiving the whole of the net income from said trust fund during my life, and in the exercise of said power I do hereby direct that the income over which I have the power of appointment as aforesaid shall be paid in equal shares to my children surviving at the date of the respective payments which shall be made out of the income from said trust fund; provided, however, that the surviving issue of any deceased child shall stand in the place of and receive the share of said net income which such deceased child would have been entitled to receive if living at the date of

the respective payments out of said income.
(Rec., p. 7.)

Kate Field died April 29, 1917, and her will was duly probated in the Probate Court of Cook County, Ill. The collector of internal revenue, acting under the internal revenue act of 1916 and the regulations issued thereunder by the Commissioner of Internal Revenue, included as part of the gross estate of Kate Field the appointed estate passing under the execution by her of the general power of appointment given her by the will of Joseph Field, and proceeded to assess and collect over protest an inheritance tax on the net value thereof.

On failure to secure subsequent reimbursement through appropriate departmental procedure, the appellee, as executor of Kate Field's last will and testament, filed suit in the Court of Claims for the recovery of the tax paid.

On defendants' demurrer to plaintiff's petition (record, p. 26) the court held that the appointed estate was not taxable under the act of 1916 (record, p. 27), and upon subsequent submission of the case upon an agreed statement of fact (record, p. 29) the court reaffirmed its conclusions of law and rendered judgment for plaintiff in the sum of \$121,059.60 for the tax thus held to be improperly collected. From this judgment the United States appeals.

SPECIFICATIONS OF ERROR.

The appellants submit that the court erred in the following particulars:

I. The appointed estate was taxable under the proper construction of paragraph *b*, section 202, of the act, inasmuch as the testamentary exercise of the power of appointment effected "a transfer * * * intended to take effect in possession or enjoyment" at or after the death of the appointor, Kate Field.

II. Such estate was also taxable under the proper construction of paragraph *a* of such section, inasmuch as the estate was subject to the payment of the charges against the estate of the appointor and to the expenses of its administration, and was also subject to distribution as part of her estate, so popularly understood.

ARGUMENT.

I.

Internal revenue act of 1916 and the legislative intent in regard thereto.

The internal revenue act of September 8, 1916 (39 Stat., pt. 1, ch. 463, p. 756), provides (sec. 201, *id.* p. 777)—

that a tax * * * is hereby imposed on a transfer of the net estate of every decedent dying after the passage of this act * * *.

(For full text of Title II thereof relating to the estate tax, see Appendix I.)

The net estate is determined by subtracting from the gross estate of such decedent allowable deductions and exemptions enumerated in section 203 of the act. The gross estate is defined by the act as follows:

SEC. 202. That the value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated:

(a) To the extent of the interest therein of the decedent at the time of his death which after his death is subject to the payment of the charges against his estate and the expenses of its administration and is subject to distribution as part of his estate.

(b) To the extent of any interest therein of which the decedent has at any time made a transfer, or with respect to which he has created a trust, in contemplation of or intended to take effect in possession or enjoyment at or after his death, except in case of a bona fide sale for a fair consideration in money or money's worth. Any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death without such a consideration, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this title. (This act was amended October 3, 1917, 40 Stat. L., Pt. I, Sess. I, ch. 63, p. 324, and was repealed

by act of February 24, 1919, 40 Stat. L., Pt. I, Sess. III, ch. 18, p. 1057, sec. 1400, p. 1149.)

This section was construed by the Treasury Department, to whom the execution of the law was entrusted, as included in the gross estate of decedent's property passing under testamentary execution of the latter's general power of appointment. (Regulations No. 37, revised May, 1917, Art. XI, Appendix II, and Rec., p. 31.) This contemporaneous construction of the law by the executive department called upon to carry it into effect is of itself entitled to great respect.

U. S. v. Pugh, 99 U. S., 265, 269.

U. S. v. Johnston, 124 U. S., 236, 253.

The propriety of such construction is made manifest by reference to the revenue act of 1918, approved February 24, 1919. (40 Stat. L., Pt. I, Sess. III, ch. 18, p. 1096; for full text of Title IV thereof relating to estate tax, see Appendix III.) This act which is in *pari materia* with the 1916 act here under consideration may be referred to for aid in construing it. (*U. S. v. Freeman*, 3 How., 557, 564.) Paragraph c, section 402 thereof (40 Stat. L., 1097), provides in terms for inclusion in a decedent's gross estate of "any property passing under a general power of appointment exercised by the decedent (1) by will, or (2) by deed executed in contemplation of, or intended to take effect in possession or enjoyment at or after, his death, except in case of a bona fide sale for a fair consideration in money or money's worth." The explanation of this specific provision,

found in the report of the Ways and Means Committee of September 3, 1918, demonstrates the legislative intent regarding the 1916 act. The portion of such report pertinent to the present inquiry (House Document No. 1267, p. 101) is:

TITLE IV.—ESTATE TAX.

Congress for the first time by the revenue act of September 8, 1916, levied a tax (a graduated tax) upon the transfer of the net estate of a decedent. In determining the net estate an exemption of \$50,000 is allowed * * *.

The present bill provides for the imposition of a tax which will take the place of that imposed by Title II of the revenue act of 1916 as amended March 3, 1917, and the tax imposed by Title IX of the revenue act of 1917.

Section 402 of this bill, which takes the place of section 202 of the original act, has been revised so as to contain a provision specifically including in the gross estate dower, curtesy, or any estate created in lieu of dower or curtesy * * *.

There has also been included in the gross estate the value of property passing under a general power of appointment. *This amendment as well as that preceding is for the purpose of clarifying rather than extending the existing statute.* A person having a general power of appointment is, with respect to disposition of the property at his death, in a position not unlike that of its owner. The possessor of

the power has full authority to dispose of the property at his death, and there seems to be no reason why the privilege which he exercises should not be taxed in the same degree as other property over which he exercises the same authority. The absence of a provision including property transferred by power of appointment makes it possible, by resorting to the creation of such a power, to effect two transfers of an estate with the payment of only one tax.

From this it is manifest that the intent of Congress in enacting the 1916 act was to include in the gross estate of a decedent, such as Mrs. Field, property passing under the latter's testamentary exercise of a general power of appointment. This intent was sufficiently expressed in the general language of section 202 of the act, either paragraph of which it is submitted is broad enough to cover such a case.

II.

The testamentary execution by a donee of a general power of appointment effects a transfer of the appointed estate within the meaning of paragraph (b), section 202 of the act.

The language of the act (sec. 202) pertinent to a consideration of this phase of the case is:

that the value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated: * * * (b) to the extent of

any interest therein of which the decedent has at any time made a transfer * * * intended to take effect in possession or enjoyment at or after his death * * *.

The common-law fiction regards the donor of a power as the source of title to an appointed estate, but it is submitted that the donee's execution of the power is a transfer of such estate when such execution is requisite to pass title to the appointees.

In *Chanler v. Kelsey, Comp.* (205 U. S., 466), the question determined was that the New York inheritance-tax law of 1897, taxing a testamentary exercise of a power of appointment created prior thereto, was not in contravention of the fourteenth amendment to the Constitution prohibiting taking property without due process of law. The plaintiff's contention was that the estate taxed was derived from the deeds of William B. Astor, deceased, which created the power of appointment and which were executed prior to the passage of the act and not from the will of Laura A. Delano, deceased, who exercised such power subsequent to the passage of the act. Being so derived plaintiffs contended that the estate had vested prior to the passage of the act in question, and that the statute could not, for purposes of taxation, "deem" a transfer that which was not a transfer without contravening the fourteenth amendment to the Constitution. It was essential, therefore, to ascertain whether as a matter of law the appointed estate vested in the appointees on the creation of the

appointed estate, or whether the execution of the power effected the transfer thereof.

(See brief of plaintiffs in error in such case, No. 240, argued March 14, 1907; decided April 15, 1907, pp. 42 and 44 to 47, inclusive.)

Mr. Justice Day, delivering the opinion of the court, said (pp. 473, 474):

However technically correct it may be to say that the estate came from the donor and not from the donee of the power, it is self-evident that it was only upon the exercise of the power that the estate in the plaintiffs in error became complete. Without the exercise of the power of appointment the estates in remainder would have gone to all in the class named in the deeds of William B. Astor. By the exercise of this power some were divested of their estates and the same were vested in others. It may be that the donee had no interest in the estate as owner, but it took her act of appointment to finally transfer the estate to some of the class and take it from others.

Notwithstanding the common-law rule that estates created by the execution of a power take effect as if created by the original deed, for some purposes the execution of the power is considered the source of title. It is so within the purpose of the registration acts. A person deriving title under an appointment is considered as claiming under the donee within the meaning of a covenant for quiet enjoyment. (2 Sugden on Powers, 3d ed., 19.)

So on an issue to try whether the plaintiff was entitled by two writings, or any other, purporting a will of J. S., and the evidence was of a feoffment to the use of such person as J. S. should appoint by his will, in which case it was contended that the devisees were in by the feoffment and not by the will, the court held that this was only *fictione juris*, for that they were not in *without* the will, and therefore that was the principal part of the title, and such proof was good enough and pursuant to the issue, and a verdict was accordingly given for the plaintiff. (2 Sugden on Powers, 19, citing *Bartlett v. Ramsden*, 1 Keb. 570.)

So, in the present case, the plaintiffs in error are not in *without* the exercise of the power by the will of Mrs. Delano.

This decision has been cited with approval in *Luques Appellant* (114 Me. 235-340) and has been followed in *Minot v. Treasurer & Receiver General* (207 Mass. 588). Its fundamental principle, viz, the donee of a power transfers the estate on the execution of the power, is recognized in *McFall v. Kirkpatrick* (236 Ill. 281-306).

In the present case, it will be observed that the testamentary execution of the power by Kate Field passed to the beneficiaries equal shares in the appointed estate. Had she not executed the power, the same beneficiaries would have participated in the estate by reason of the will of Joseph Field, but they would have taken different shares. By the latter's will his sons or their issue *per stirpes* would

each have received three-twelfths of the estate and his daughters or their issue *per stirpes* would each have received two-twelfths of the estate. Both the reasoning and the language of Mr. Justice Day, above, is applicable to this partial investiture and divestiture of the estate. "By the exercise of this power were some divested of their estates, and the same were vested in others. It may be that the donee had no interest in the estate as owner, but it took her act of appointment to finally transfer the estate to some of the class and take it from others." As the court there concludes, the beneficiaries are not in *without* the exercise of the power of the will of Mrs. Field. Such being the case, it follows that the execution of the power by Mrs. Field was a transfer of the appointed estate. This transfer, being by her last will and testament, clearly was intended to take effect in possession and enjoyment on the testatrix's death.

III.

The appointed estate is taxable under paragraph (a) of section 202 of the act.

The act of 1916 provides:

SEC. 202. That the value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated:

(a) To the extent of the interest therein of the decedent at the time of his death which after his death is subject to the payment of

the charges against his estate and the expenses of its administration and is subject to distribution as part of his estate.

It is essential, therefore, to determine whether the estate passing under the execution by Kate Field of her power of appointment was subject to her debts, and was subject to distribution as part of her estate.

(a) **An appointed estate is subject to the payment of debts of a deceased appointor.**

It is a well-recognized rule of law that an estate passing under the execution of a general power of appointment is subject to the payment of debts of the donee of the power.

- 2 *Sugden on Powers*, c. 8, par. 7, p. 29.
- Brandeis v. Cochrane*, 112 U. S. 344-352.
- Knowles v. Dodge*, 12 D. C. (1 Mackey) 66.
- Duncanson v. Manson*, 3 D. C. App. 260-272.
- Clapp v. Ingraham*, 126 Mass. 200.
- Johnson et al. v. Cushing*, 15 N. H. 298.
- Talmadge v. Sill*, 21 Barb. 34.
- Rogers v. Hinton*, 62 N. C. 101.
- 4 *Kent's Comm.*, sections 339-340.
- 22 *Am. & Eng. Encyc. of Law* (2d ed.), 1147.

A general power of appointment is one which the donee of the power can exercise in favor of such person or persons as he pleases. (*Farwell on Powers*, 2d ed. 7.)

The power of appointment given Kate Field by the will of Joseph Field and duly exercised by her was unlimited as concerns the person or persons whom she might appoint. Such power was therefore a

general power and the estate passing by testamentary execution thereof was subject to the payment of Kate Field's debts.

(b) For purposes of taxation, appointment of property under the power is a distribution of such property as part of the appointor's estate.

The common law regards the donor of a power as the source of title to an appointed estate. This rule, however, is only a fiction, which has been disregarded when either its justice and utility were not apparent. (*Chanler v. Kelsey, Compt., supra.*)

The present case is not concerned with maintenance or disturbance of rules of property but merely with the construction of an inheritance tax law. The words of the act in question "distribution as part of his estate" (sec. 202, par. a) are words in common use and are therefore to be given their popular meaning (26 *Am. and Eng. Encyc. of Law*, 605). It is submitted that a popular interpretation of this language would include in the estate of a deceased testatrix property over which she enjoyed substantially all the incidents of ownership and of which she disposed at her death. The donee of a power, such as Mrs. Field, possesses and exercises such rights and powers in relation to the appointed estate.

As was said by the Ways and Means Committee (House Document No. 1267, p. 101):

A person having a general power of appointment is, with respect to disposition of the property at his death, in a position not unlike

that of its owner. The possessor of the power has full authority to dispose of the property at his death, and there seems to be no reason why the privilege which he exercises should not be taxed in the same degree as other property over which he exercises the same authority.

Here it was the donee of the power, Mrs. Field, who enjoyed the estate during her life and had absolute power of disposal at her death. (*Minot v. Treasurer and Receiver*, 207 Mass. 588-591.)

It has been intimated that during her life the estate subject to the power is subject to the lien of judgments against such donee. (*Brandeis v. Cochrane*, 112 U. S. 344-352, commenting on ch. 77, secs. 1 and 3, Hurd's Ill. Rev. Statutes, 1917.)

It was she whose act "turned the course of ownership," "by whose act alone any future interest could be brought into existence." (*McFall v. Kirkpatrick*, 236 Ill. 281-306.)

On execution of her power of appointment, the appointed estate became liable for her debts (4 *Kent's Comm.*, 339; *Talmadge v. Sill*, 21 Barb. 34-51 and cases heretofore cited); and it has been suggested that such an estate is liable therefor, though the donee does not execute the power (*Duncanson v. Manson*, 3 D. C. App. 260-273).

On the donee's death, her executors were entitled to administer the appointed estate as part of her assets. (*Olney v. Balch*, 154 Mass. 318.)

She was regarded as the source of title within the purposes of registration acts and within the meaning

of covenants for quiet enjoyment. (*Chanler v. Kelsey, Comp.*, 205 U. S. 466 *Scrafton v. Quincy*, 2 Ves., Sr. 413; 2 *Sugden on Powers* (3d ed.), sec. 19.)

These incidents of ownership caused the Supreme Court of Massachusetts to say, after restating the fiction of source of title, "in many particulars the donee is often more directly responsible for the possession and enjoyment of the beneficiary than the donor." * * * "His (the donee's) relation to it (the appointed estate) is very much like that of any owner." (*Minot v. Treasurer and Receiver General*, 207 Mass. 588-590.)

Thus the Supreme Court of New Hampshire has said in *Johnson et al. v. Cushing* (15 N. H. 298, pp. 307, 308):

Where the owner of property, who has the right to dispose of it in such manner and under such limitations as he pleases, confers upon another the general power of making such disposition of it as *he* pleases, or, in other words, invests him with all the attributes of ownership over it, and that other accepts the power thus tendered to him, and undertakes to exercise dominion over the subject matter, as if he was an owner; the original proprietor, having authorized the other to treat it as if it was the property of the latter, by exercising all the power over it which he could exert if it were actually his property; and he having undertaken to treat it as if it was his property, by making a disposition of it under such a power; a court of equity may well do what the parties have

done, that is, treat it as the property of the appointer, and make it subject to the incidents attending such property. The court in such case do no more than to treat it as the property of the party, who, by the express authority of the owner, has the power and right to treat it as if it were his property, and who undertakes so to do.

Chief Baron Pollock, while recognizing the purely technical distinction between an estate in fee and an estate for life coupled with a general power of appointment, stated in *Attorney General v. Upton, and others* (1 Law Rep. Exchequer Cases (1865, 1866), p. 224 at p. 229):

In substance the interest is the same, in power of enjoyment and in power of disposition; but there is a real distinction in the fact that the owner of a life interest coupled with a power must, in order to secure the fee to his heirs, actually exercise the power; otherwise it will pass to those to whom it is limited in default of appointment. If, however, he does exercise the power, he is in substance doing the same thing as if he conveyed a fee vested in himself.

In the case cited another distinguished English Judge, Baron Bramwell, was of the opinion that in questions of taxation the fiction of source of title being only a *fiction* should not be permitted to contradict the fact. One of the questions considered was the identity of the person from whom an appointed estate was "derived" within the meaning of the succession duty act (16, 17, Vict. c. 51).

Bramwell, B., said (p. 211):

From whom, then, is the interest derived? As I said in *Barber's case* (1), these are ordinary English words, and ought to be construed by lawyers as ordinary Englishmen would construe them. Now, not one man in a hundred would say that this interest was derived from Admiral Fitzhawe (the donor) or from any other person than the donee of the power. I do not mean to deny or attempt to cast any doubt on the rule of law that an appointee takes his estate from the donor of the power, but I say that it is a rule not applicable to the construction of this statute, and it is not true, as is supposed, that there is any decision of the House of Lords to the contrary.

Mr. Justice Day, commenting on this said (*Chamber v. Keloy, Comp.*, 205 U. S. 406, p. 420):

The learned judge seems to have gone further, as to section 2, than his brethren were willing to. (*Attorney General v. Mitchell*, L. R. 6 Q. B. D. 545.) His observations are nevertheless suggestive.

In the language of Baron Bramwell, the words of the statute under consideration are ordinary English words and should be construed as ordinary English-speaking people would construe them.

To pursue this train of thought, let us inquire whose estate is distributed in the understanding of the ordinary man, when a power of appointment is exercised by the will of a life tenant of property subject to the power. Is it the estate of the donee of the power who enjoyed it during her life; who had absolute power of disposition over it at her death; who

did dispose of it; who subjected it to the payment of her debts; whose executors were entitled to administer it; who was regarded as the grantor so far as concerns registration acts or covenants for quiet enjoyment; whose relation to the estate is admitted by the courts as "very much like that of any owner"; who was invested "with all the attributes of ownership"; whose title is "in substance * * * the same" as ownership? It is submitted that there is not one man in a hundred but will say that the appointed property was distributed as part of the estate of such person.

The question then arises whether this practical and popular construction of the act—a construction intended and approved by Congress—shall be defeated by "a matter of legal technical expression" (Bramwell, B., in *Attorney General v. Upton*, *supra*) which has been recognized for three centuries to be only a fiction. (*Bartlett v. Ramsden*, 1 Keb. 570, cited in *Chanler v. Kelsey*, *supra*). It is submitted that the substance is not to be destroyed by a shadow and that the legislative intent is not to be defeated by a fiction.

CONCLUSION.

In conclusion, it is submitted that the legislative intent was to render taxable appointed estates.

Such intent was adequately expressed by the general language of the act and is controlling.

The testamentary execution of a power of appointment is a transfer intended to take effect at the appointor's death within the meaning of paragraph b, section 202.

Furthermore, property passing under the execution of a general power is liable for the deceased appointor's debts and for the expenses of the administration of her estate, and is also subject to distribution as part of her estate as popularly understood and as intended by the legislature. Such property is therefore taxable under par. (a), sec. 202.

Under any or all of these interpretations of the act which give effect to the legislative intent, appointed estates may be taxed, and it follows that in the present case the tax complained of was properly levied.

The judgment of the Court of Claims should therefore be reversed and judgment should be entered for the United States.

Respectfully submitted.

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October 1920.



APPENDIX I.

An Act To increase the revenue, and for other purposes
(approved September 8, 1916).

[39 Stat., Pt. I, chap. 463, pp. 756, 777, et seq.]

TITLE II.—ESTATE TAX.

SEC. 200. That when used in this title—

The term “person” includes partnerships, corporations, and associations;

The term “United States” means only the States, the Territories of Alaska and Hawaii, and the District of Columbia;

The term “executor” means the executor or administrator of the decedent, or, if there is no executor or administrator, any person who takes possession of any property of the decedent; and

The term “collector” means the collector of internal revenue of the district in which was the domicile of the decedent at the time of his death, or, if there was no such domicile in the United States, then the collector of the district in which is situated the part of the gross estate of the decedent in the United States, or, if such part of the gross estate is situated in more than one district, then the collector of internal revenue at Baltimore, Maryland.

SEC. 201. That a tax (hereinafter in this title referred to as the tax), equal to the following percentages of the value of the net estate, to be determined as provided in section two hundred and three, is hereby imposed upon the transfer of the net estate of every decedent dying after the passage of this act, whether a resident or nonresident of the United States:

One per centum of the amount of such net estate not in excess of \$50,000;

Two per centum of the amount by which such net estate exceeds \$50,000 and does not exceed \$150,000;

Three per centum of the amount by which such net estate exceeds \$150,000 and does not exceed \$250,000;

Four per centum of the amount by which such net estate exceeds \$250,000 and does not exceed \$450,000;

Five per centum of the amount by which such net estate exceeds \$450,000 and does not exceed \$1,000,000;

Six per centum of the amount by which such net estate exceeds \$1,000,000 and does not exceed \$2,000,000;

Seven per centum of the amount by which such net estate exceeds \$2,000,000 and does not exceed \$3,000,000;

Eight per centum of the amount by which such net estate exceeds \$3,000,000 and does not exceed \$4,000,000;

Nine per centum of the amount by which such net estate exceeds \$4,000,000 and does not exceed \$5,000,000; and

Ten per centum of the amount by which such net estate exceeds \$5,000,000.

SEC. 202. That the value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—

(a) To the extent of the interest therein of the decedent at the time of his death which after his death is subject to the payment of the charges against his estate and the expenses of its administration and is subject to distribution as part of his estate;

(b) To the extent of any interest therein of which the decedent has at any time made a transfer, or with respect to which he has created a trust, in contemplation of or intended to take effect in possession or enjoyment at or after his death, except in case of a bona fide sale for a fair consideration in money or money's worth. Any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death without such a consideration, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this title; and

(c) To the extent of the interest therein held jointly or as tenants in the entirety by the decedent and any other person, or deposited in banks or other institutions in their joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to have belonged to the decedent.

For the purpose of this title stock in a domestic corporation owned and held by a nonresident decedent shall be deemed property within the United States, and any property of which the decedent has made a transfer or with respect to which he has created a trust, within the meaning of subdivision (b) of this section, shall be deemed to be situated in the United States, if so situated either at the time of the transfer or the creation of the trust or at the time of the decedent's death.

SEC. 203. That for the purpose of the tax the value of the net estate shall be determined—

(a) In the case of a resident, by deducting from the value of the gross estate—

(1) Such amounts for funeral expenses, administration expenses, claims against the estate, unpaid mort-

gages, losses incurred during the settlement of the estate arising from fires, storms, shipwreck, or other casualty, and from theft, when such losses are not compensated for by insurance or otherwise, support during the settlement of the estate of those dependent upon the decedent, and such other charges against the estate, as are allowed by the laws of the jurisdiction, whether within or without the United States, under which the estate is being administered; and

(2) An exemption of \$50,000;

(b) In the case of a nonresident, by deducting from the value of that part of his gross estate which at the time of his death is situated in the United States that proportion of the deductions specified in paragraph (1) of subdivision (a) of this section which the value of such part bears to the value of his entire gross estate, wherever situated. But no deductions shall be allowed in the case of a nonresident unless the executor includes in the return required to be filed under section two hundred and five the value at the time of his death of that part of the gross estate of the nonresident not situated in the United States.

SEC. 204. That the tax shall be due one year after the decedent's death. If the tax is paid before it is due a discount at the rate of five per centum per annum, calculated from the time payment is made to the date when the tax is due, shall be deducted. If the tax is not paid within ninety days after it is due interest at the rate of ten per centum per annum from the time of the decedent's death shall be added as part of the tax, unless because of claims against the estate, necessary litigation, or other unavoidable delay the collector finds that the tax can not be determined, in which case the interest shall be at the rate of six per centum per annum from the time of the decedent's

death until the cause of such delay is removed, and thereafter at the rate of ten per centum per annum. Litigation to defeat the payment of the tax shall not be deemed necessary litigation.

SEC. 205. That the executor, within thirty days after qualifying as such, or after coming into possession of any property of the decedent, whichever event first occurs, shall give written notice thereof to the collector. The executor shall also, at such times and in such manner as may be required by the regulations made under this title, file with the collector a return under oath in duplicate, setting forth (a) the value of the gross estate of the decedent at the time of his death, or, in case of a nonresident, of that part of his gross estate situated in the United States; (b) the deductions allowed under section two hundred and three; (c) the value of the net estate of the decedent as defined in section two hundred and three; and (d) the tax paid or payable thereon; or such part of such information as may at the time be ascertainable and such supplemental data as may be necessary to establish the correct tax.

Return shall be made in all cases of estates subject to the tax or where the gross estate at the death of the decedent exceeds \$60,000, and in the case of the estate of every nonresident any part of whose gross estate is situated in the United States. If the executor is unable to make a complete return as to any part of the gross estate of the decedent, he shall include in his return a description of such part and the name of every person holding a legal or beneficial interest therein, and upon notice from the collector such person shall in like manner make a return as to such part of the gross estate. The Commissioner of Internal Revenue shall make all assessments of the

tax under the authority of existing administrative special and general provisions of law relating to the assessment and collection of taxes.

SEC. 206. That if no administration is granted upon the estate of a decedent, or if no return is filed as provided in section two hundred and five, or if a return contains a false or incorrect statement of a material fact, the collector or deputy collector shall make a return and the Commissioner of Internal Revenue shall assess the tax thereon.

SEC. 207. That the executor shall pay the tax to the collector or deputy collector. If for any reason the amount of the tax can not be determined, the payment of a sum of money sufficient, in the opinion of the collector, to discharge the tax shall be deemed payment in full of the tax, except as in this section otherwise provided. If the amount so paid exceeds the amount of the tax as finally determined, the Commissioner of Internal Revenue shall refund such excess to the executor. If the amount of the tax as finally determined exceeds the amount so paid the commissioner shall notify the executor of the amount of such excess. From the time of such notification to the time of the final payment of such excess part of the tax, interest shall be added thereto at the rate of ten per centum per annum, and the amount of such excess shall be a lien upon the entire gross estate, except such part thereof as may have been sold to a bona fide purchaser for a fair consideration in money or money's worth.

The collector shall grant to the person paying the tax duplicate receipts, either of which shall be sufficient evidence of such payment, and shall entitle the executor to be credited and allowed the amount thereof by any court having jurisdiction to audit or settle his accounts.

SEC. 208. That if the tax herein imposed is not paid within sixty days after it is due, the collector shall, unless there is reasonable cause for further delay, commence appropriate proceedings in any court of the United States, in the name of the United States, to subject the property of the decedent to be sold under the judgment or decree of the court. From the proceeds of such sale the amount of the tax, together with the costs and expenses of every description to be allowed by the court, shall be first paid, and the balance shall be deposited according to the order of the court, to be paid under its direction to the person entitled thereto. If the tax or any part thereof is paid by, or collected out of that part of the estate passing to or in the possession of, any person other than the executor in his capacity as such, such person shall be entitled to reimbursement out of any part of the estate still undistributed or by a just and equitable contribution by the persons whose interest in the estate of the decedent would have been reduced if the tax had been paid before the distribution of the estate or whose interest is subject to equal or prior liability for the payment of taxes, debts, or other charges against the estate, it being the purpose and intent of this title that so far as is practicable and unless otherwise directed by the will of the decedent the tax shall be paid out of the estate before its distribution.

SEC. 209. That unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien.

If the decedent makes a transfer of, or creates a trust with respect to, any property in contemplation of or intended to take effect in possession or enjoyment at or after his death (except in the case of a bona fide sale for a fair consideration in money or money's worth), and if the tax in respect thereto is not paid when due, the transferee or trustee shall be personally liable for such tax, and such property, to the extent of the decedent's interest therein at the time of such transfer, shall be subject to a like lien equal to the amount of such tax. Any part of such property sold by such transferee or trustee to a bona fide purchaser for a fair consideration in money or money's worth shall be divested of the lien and a like lien shall then attach to all the property of such transferee or trustee, except any part sold to a bona fide purchaser for a fair consideration in money or money's worth.

SEC. 210. That whoever knowingly makes any false statement in any notice or return required to be filed by this title shall be liable to a penalty of not exceeding \$5,000 or imprisonment not exceeding one year, or both, in the discretion of the court.

Whoever fails to comply with any duty imposed upon him by section two hundred and five, or, having in his possession or control any record, file, or paper containing or supposed to contain any information concerning the estate of the decedent, fails to exhibit the same upon request to the Commissioner of Internal Revenue or any collector or law officer of the United States, or his duly authorized deputy or agent, who desires to examine the same in the performance of his duties under this title, shall be liable to a penalty of not exceeding \$500, to be recovered, with costs of suit, in a civil action in the name of the United States.

SEC. 211. That all administrative, special, and general provisions of law, including the laws in relation to the assessment and collection of taxes, not heretofore specifically repealed are hereby made to apply to this title so far as applicable and not inconsistent with its provisions.

SEC. 212. That the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make such regulations, and prescribe and require the use of such books and forms, as he may deem necessary to carry out the provisions of this title.

APPENDIX II.

TREASURY DEPARTMENT, UNITED STATES INTERNAL-
REVENUE REGULATIONS 37—LAWS AND REGULA-
TIONS RELATING TO ESTATE TAX, REVISED MAY,
1917.

ARTICLE XI. Property passing under a general power of appointment is to be included as a portion of the gross estate of a decedent appointer. (T. D. 2477.)

APPENDIX III.

An Act To provide revenue, and for other purposes (approved February 24, 1919).

[40 Statutes at Large, Part I, Sec. III, chap. 18, p. 1057 at pp. 1096 et seq.]

TITLE IV.—ESTATE TAX.

SEC. 400. That when used in this title—

The term “executor” means the executor or administrator of the decedent, or, if there is no executor or administrator, any person who takes possession of any property of the decedent; and

The term “collector” means the collector of internal revenue of the district in which was the domicile of the decedent at the time of his death, or, if there was no such domicile in the United States, then the collector of the district in which is situated the part of the gross estate of the decedent in the United States, or, if such part of the gross estate is situated in more than one district, then the collector of internal revenue of such district as may be designated by the commissioner.

SEC. 401. That (in lieu of the tax imposed by Title II of the Revenue Act of 1916, as amended, and in lieu of the tax imposed by Title IX of the Revenue Act of 1917) a tax equal to the sum of the following percentages of the value of the net estate (determined as provided in section 403) is hereby imposed upon the transfer of the net estate of every decedent

dying after the passage of this act, whether a resident or nonresident of the United States:

1 per centum of the amount of the net estate not in excess of \$50,000;

2 per centum of the amount by which the net estate exceeds \$50,000 and does not exceed \$150,000;

3 per centum of the amount by which the net estate exceeds \$150,000 and does not exceed \$250,000;

4 per centum of the amount by which the net estate exceeds \$250,000 and does not exceed \$450,000;

6 per centum of the amount by which the net estate exceeds \$450,000 and does not exceed \$750,000;

8 per centum of the amount by which the net estate exceeds \$750,000 and does not exceed \$1,000,000;

10 per centum of the amount by which the net estate exceeds \$1,000,000 and does not exceed \$1,500,000;

12 per centum of the amount by which the net estate exceeds \$1,500,000 and does not exceed \$2,000,000;

14 per centum of the amount by which the net estate exceeds \$2,000,000 and does not exceed \$3,000,000;

16 per centum of the amount by which the net estate exceeds \$3,000,000 and does not exceed \$4,000,000;

18 per centum of the amount by which the net estate exceeds \$4,000,000 and does not exceed \$5,000,000;

20 per centum of the amount by which the net estate exceeds \$5,000,000 and does not exceed \$8,000,000;

22 per centum of the amount by which the net estate exceeds \$8,000,000 and does not exceed \$10,000,000; and

25 per centum of the amount by which the net estate exceeds \$10,000,000.

The taxes imposed by this title or by Title II of the Revenue Act of 1916 (as amended by the act entitled "An Act to provide increased revenue to defray the expenses of the increased appropriations for the Army and Navy and the extensions of fortifications, and for other purposes," approved March 3, 1917) or by Title IX of the Revenue Act of 1917, shall not apply to the transfer of the net estate of any decedent who has died or may die while serving in the military or naval forces of the United States in the present war or from injuries received or disease contracted while in such service, and any such tax collected upon such transfer shall be refunded to the executor.

SEC. 402. That the value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—

(a) To the extent of the interest therein of the decedent at the time of his death which after his death is subject to the payment of the charges against his estate and the expenses of its administration and is subject to distribution as part of his estate;

(b) To the extent of any interest therein of the surviving spouse, existing at the time of the decedent's death as dower, courtesy, or by virtue of a statute creating an estate in lieu of dower or courtesy;

(c) To the extent of any interest therein of which the decedent has at any time made a transfer, or with respect to which he has at any time created a trust, in contemplation of or intended to take effect in possession or enjoyment at or after his death (whether such transfer or trust is made or created

before or after the passage of this act), except in case of a bona fide sale for a fair consideration in money or money's worth. Any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death without such a consideration, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this title;

(d) To the extent of the interest therein held jointly or as tenants in the entirety by the decedent and any other person, or deposited in banks or other institutions in their joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to have belonged to the decedent;

(e) To the extent of any property passing under a general power of appointment exercised by the decedent (1) by will, or (2) by deed executed in contemplation of, or intended to take effect in possession or enjoyment at or after, his death, except in case of a bona fide sale for a fair consideration in money or money's worth; and

(f) To the extent of the amount receivable by the executor as insurance under policies taken out by the decedent upon his own life; and to the extent of the excess over \$40,000 of the amount receivable by all other beneficiaries as insurance under policies taken out by the decedent upon his own life.

SEC. 403. That for the purpose of the tax the value of the net estate shall be determined—

(a) In the case of a resident, by deducting from the value of the gross estate—

(1) Such amounts for funeral expenses, administration expenses, claims against the estate, unpaid mortgages, losses incurred during the settlement of the estate arising from fires, storms, shipwreck, or other casualty, or from theft, when such losses are not compensated for by insurance or otherwise, and such amounts reasonably required and actually expended for the support during the settlement of the estate of those dependent upon the decedent, as are allowed by the laws of the jurisdiction, whether within or without the United States, under which the estate is being administered, but not including any income taxes upon income received after the death of the decedent, or any estate, succession, legacy, or inheritance taxes;

(2) An amount equal to the value at the time of the decedent's death of any property, real, personal, or mixed, which can be identified as having been received by the decedent as a share in the estate of any person who died within five years prior to the death of the decedent, or which can be identified as having been acquired by the decedent in exchange for property so received, if an estate tax under the revenue act of 1917 or under this act was collected from such estate, and if such property is included in the decedent's gross estate;

(3) The amount of all bequests, legacies, devises, or gifts, to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes, or to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net

earnings of which inures to the benefit of any private stockholder or individual, or to a trustee or trustees exclusively for such religious, charitable, scientific, literary, or educational purposes. This deduction shall be made in case of the estates of all decedents who have died since December 31, 1917; and

(4) An exemption of \$50,000;

(b) In the case of a nonresident, by deducting from the value of that part of his gross estate which at the time of his death is situated in the United States—

(1) That proportion of the deductions specified in paragraph (1) of subdivision (a) of this section which the value of such part bears to the value of his entire gross estate, wherever situated, but in no case shall the amount so deducted exceed 10 per centum of the value of that part of his gross estate which at the time of his death is situated in the United States;

(2) An amount equal to the value at the time of the decedent's death of any property, real, personal, or mixed, which can be identified as having been received by the decedent as a share in the estate of any person who died within five years prior to the death of the decedent, or which can be identified as having been acquired by the decedent in exchange for property so received, if an estate tax under the Revenue Act of 1917 or under this Act was collected from such estate, and if such property is included in that part of the decedent's gross estate which at the time of his death is situated in the United States; and

(3) The amount of all bequests, legacies, devises, or gifts, to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes, or to or for the use of any domestic corporation

organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, or to a trustee or trustees exclusively for such religious, charitable, scientific, literary, or educational purposes within the United States. This deduction shall be made in case of the estates of all decedents who have died since December 31, 1917; and

No deduction shall be allowed in the case of a nonresident unless the executor includes in the return required to be filed under section 404 the value at the time of his death of that part of the gross estate of the nonresident not situated in the United States.

For the purpose of this title stock in a domestic corporation owned and held by a nonresident decedent, and the amount receivable as insurance upon the life of a nonresident decedent where the insurer is a domestic corporation, shall be deemed properly within the United States, and any property of which the decedent has made a transfer or with respect to which he has created a trust, within the meaning of subdivision (c) of section 402, shall be deemed to be situated in the United States, if so situated either at the time of the transfer or the creation of the trust, or at the time of the decedent's death.

In the case of any estate in respect to which the tax under existing law has been paid, if necessary to allow the benefit of the deduction under paragraph (3) of subdivision (a) or (b) the tax shall be redetermined and any excess of tax paid shall be refunded to the executor.

SEC. 404. That the executor, within sixty days after qualifying as such, or after coming into possession of any property of the decedent, whichever event first occurs, shall give written notice thereof to the collector. The executor shall also, at such times and in such manner as may be required by regulations made pursuant to law, file with the collector a return under oath in duplicate, setting forth (a) the value of the gross estate of the decedent at the time of his death, or, in case of a nonresident, of that part of his gross estate situated in the United States; (b) the deductions allowed under section 403; (c) the value of the net estate of the decedent as defined in section 403; and (d) the tax paid or payable thereon; or such part of such information as may at the time be ascertainable and such supplemental data as may be necessary to establish the correct tax.

Return shall be made in all cases where the gross estate at the death of the decedent exceeds \$50,000, and in the case of the estate of every nonresident any part of whose gross estate is situated in the United States. If the executor is unable to make a complete return as to any part of the gross estate of the decedent, he shall include in his return a description of such part and the name of every person holding a legal or beneficial interest therein, and upon notice from the collector such person shall in like manner make a return as to such part of the gross estate. The Commissioner shall make all assessments of the tax under the authority of existing administrative special and general provisions of law relating to the assessment and collection of taxes.

SEC. 405. That if no administration is granted upon the estate of a decedent, or if no return is filed as provided in section 404, or if a return contains a false

or incorrect statement of a material fact, the collector or deputy collector shall make a return and the Commissioner shall assess the tax thereon.

SEC. 406. That the tax shall be due one year after the decedent's death; but in any case where the Commissioner finds that payment of the tax within one year after the decedent's death would impose undue hardship upon the estate, he may grant an extension of time for the payment of the tax for a period not to exceed three years from the due date. If the tax is not paid within one year and 180 days after the decedent's death, interest at the rate of 6 per centum per annum from the expiration of one year after the decedent's death shall be added as part of the tax.

SEC. 407. That the executor shall pay the tax to the collector or deputy collector. If the amount of the tax can not be determined, the payment of a sum of money sufficient, in the opinion of the collector, to discharge the tax shall be deemed payment in full of the tax, except as in this section otherwise provided. If the amount so paid exceeds the amount of the tax as finally determined, the Commissioner shall refund such excess to the executor. If the amount of the tax as finally determined exceeds the amount so paid, the collector shall notify the executor of the amount of such excess and demand payment thereof. If such excess part of the tax is not paid within thirty days after such notification, interest shall be added thereto at the rate of 10 per centum per annum from the expiration of such thirty days' period until paid, and the amount of such excess shall be a lien upon the entire gross estate, except such part thereof as may have been sold to a bona fide purchaser for a fair consideration in money or money's worth.

The collector shall grant to the person paying the tax duplicate receipts, either of which shall be sufficient evidence of such payment, and shall entitle the executor to be credited and allowed the amount thereof by any court having jurisdiction to audit or settle his accounts.

SEC. 408. That if the tax herein imposed is not paid within 180 days after it is due, the collector shall, unless there is reasonable cause for further delay, proceed to collect the tax under the provisions of general law, or commence appropriate proceedings in any court of the United States, in the name of the United States, to subject the property of the decedent to be sold under the judgment or decree of the court. From the proceeds of such sale the amount of the tax, together with the costs and expenses of every description to be allowed by the court, shall be first paid, and the balance shall be deposited according to the order of the court, to be paid under its direction to the person entitled thereto.

If the tax or any part thereof is paid by, or collected out of *ci* that part of the estate passing to or in the possession of, any person other than the executor in his capacity as such, such person shall be entitled to reimbursement out of any part of the estate still undistributed or by a just and equitable contribution by the persons whose interest in the estate of the decedent would have been reduced if the tax had been paid before the distribution of the estate or whose interest is subject to equal or prior liability for the payment of taxes, debts, or other charges against the estate, it being the purpose and intent of this title that so far as is practicable and unless otherwise directed by the will of the decedent the tax shall be paid out of the estate before its distribution.

If any part of the gross estate consists of proceeds of policies of insurance upon the life of the decedent receivable by a beneficiary other than the executor, the executor shall be entitled to recover from such beneficiary such portion of the total tax paid as the proceeds, in excess of \$40,000, of such policies bear to the net estate. If there is more than one such beneficiary the executor shall be entitled to recover from such beneficiaries in the same ratio.

SEC. 409. That unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien. If the Commissioner is satisfied that the tax liability of an estate has been fully discharged or provided for, he may, under regulations prescribed by him with the approval of the Secretary, issue his certificate releasing any or all property of such estate from the lien herein imposed.

If (a) the decedent makes a transfer of, or creates a trust with respect to, any property in contemplation of or intended to take effect in possession or enjoyment at or after his death (except in the case of a bona fide sale for a fair consideration in money or money's worth) or (b) if insurance passes under a contract executed by the decedent in favor of a specific beneficiary, and if in either case the tax in respect thereto is not paid when due, then the transferee, trustee, or beneficiary shall be personally liable for such tax, and such property, to the extent of the decedent's interest therein at the time of such transfer, or to the extent of such beneficiary's interest under such contract of insurance, shall be subject to

a like lien equal to the amount of such tax. Any part of such property sold by such transferee or trustee to a bona fide purchaser for a fair consideration in money or money's worth shall be divested of the lien and a like lien shall then attach to all the property of such transferee or trustee, except any part sold to a bona fide purchaser for a fair consideration in money or money's worth.

SEC. 410. That whoever knowingly makes any false statement in any notice or return required to be filed under this title shall be liable to a penalty of not exceeding \$5,000, or imprisonment not exceeding one year, or both.

Whoever fails to comply with any duty imposed upon him by section 404, or, having in his possession or control any record, file, or paper, containing or supposed to contain any information concerning the estate of the decedent, or, having in his possession or control any property comprised in the gross estate of the decedent, fails to exhibit the same upon request to the Commissioner or any collector or law officer of the United States, or his duly authorized deputy or agent, who desires to examine the same in the performance of his duties under this title, shall be liable to a penalty of not exceeding \$500, to be recovered, with costs of suit, in a civil action in the name of the United States.

